

<input checked="checked" type="checkbox"/> FILED	<input type="checkbox"/> LODGED
<input type="checkbox"/> RECEIVED	<input type="checkbox"/> COPY
FEB 05 2025	
CLERK U S DISTRICT COURT DISTRICT OF ARIZONA	
BY _____	DEPUTY

Jason Crews  
1515 N Gilbert Rd Ste 107-204  
Gilbert, AZ 85234  
602-295-1875  
Jason.crews@gmail.com

*In propria persona.*

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT ARIZONA  
PHOENIX DIVISION

Jason Crews,

Plaintiff,

vs.

Symmetry Financial Group, LLC,

And

Brandon Ellison

Defendants.

Case No.:

**CV25-00376-PHX-CDB**

Complaint for Violations of:

1. NEGLIGENT VIOLATIONS  
OF THE TELEPHONE CONSUMER  
PROTECTION ACT [47 U.S.C. §227 ET  
SEQ.]
2. WILLFUL VIOLATIONS OF  
THE TELEPHONE CONSUMER  
PROTECTION ACT [47 U.S.C. §227 ET  
SEQ.]

DEMAND FOR JURY TRIAL

///

COMPLAINT- 1

**COMPLAINT**

**Preliminary Statement**

1  
2  
3 1. “When it comes to robocalls, you can only call those who, like Blondie, have  
4 said, “Call me. Call me on the line.” If you call people who haven’t opted in , then you face  
5 liability under the Telephone Communications Protection Act.” *Perrong v. Bradford*, 2024 WL  
6 2133801, at \*1 (E.D. Pa. May 13, 2024).

7 2. Plaintiff Jason Crews (“Plaintiff”) brings this action under the Telephone  
8 Consumer Protection Act (“TCPA”), 47 U.S.C § 227, a federal statute enacted in response  
9 to widespread public outrage about the proliferation of intrusive, nuisance calling practices.  
10 See *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 745 (2012).

11 3. The Defendants in this action Symmetry Financial Group, LLC and Brandon  
12 Ellison orchestrated placing at three illegal telemarketing calls using an Automated  
13 Telephone Dialing System (“ATDS”) to a number assigned to a cellular service which was  
14 included on the national Do-Not-Call List.

15 4.Plaintiff never consented to receive such messages.

**Parties**

16  
17 5.Plaintiff Jason Crews (“Crews”) is and was a resident of Maricopa County, Arizona  
18 at all relevant times, and a resident of this District.

19 6.Defendant Symmetry Financial Group, LLC(“Symmetry”), incorporated in  
20 Delaware, doing business as Symmetry Financial, and is in the business of selling insurance  
21 products throughout the United States to consumers over the telephone.

22 7.Defendant Brandon Ellison (“Ellison”), a resident of Buncombe County, North  
23 Carolina, was at all times relevant the owner and CEO of Symmetry who directed and  
24 authorized the illegal calls complained of herein.

**Jurisdiction & Venue**

25  
26 8.The Court has federal question subject matter jurisdiction over these TCPA claims:  
27 *Mims v. Arrow Fin. Services, LLC*, 132 S. Ct. 740 (2012).  
28





1 services directed at Texas residents, including the Plaintiff—occurred in this District and  
2 because the Plaintiff resides in this District and because the Plaintiff resides in the District  
3 of Arizona when he received a substantial, if not every single phone call, from Defendants  
4 Symmetry and Ellison which is the subject matter of this lawsuit.

5 12. Venue is proper for this matter because the calls at issue were sent by or on behalf  
6 of the above-named Defendants to Plaintiff, an Arizona resident.

### 7 The Telephone Consumer Protection Act

8 13. In 1991, Congress enacted the TCPA to restrict the use of sophisticated  
9 telemarketing equipment that could target millions of consumers en masse. Congress found  
10 that these calls were not only a nuisance and an invasion of privacy to consumers  
11 specifically but were also a threat to interstate commerce generally. See S. Rep. No. 102-178,  
12 at 2-3 (1991), as reprinted in 1991 U.S.C.C.A.N. 1968, 1969-71.

13 14. The TCPA makes it unlawful “to make any call (other than a call made for  
14 emergency purposes or made with the prior express consent of the called party) using an  
15 automatic telephone dialing system (“ATDS”) or an artificial or prerecorded voice ... to any  
16 telephone number assigned to a ... cellular telephone service.” 47 U.S.C. § 227(b)(1)(A)(iii).

17 15. The TCPA makes it unlawful “to initiate any telephone call to any residential  
18 telephone line using an artificial or prerecorded voice to deliver a message without the prior  
19 express consent of the called party, unless the call is initiated for emergency purposes, is  
20 made solely pursuant to the collection of a debt owed to or guaranteed by the United States  
21 or is exempted by rule or order” of the Federal Communication Commission (“FCC”). 47  
22 U.S.C. § 227(b)(1)(B). 15. The TCPA provides a private cause of action to persons who  
23 receive calls in violation of § 227(b). 47 U.S.C. § 227(b)(3).

24 16. Separately, the TCPA bans telemarketing calls without a do-not-call policy  
25 available upon demand. 47 U.S.C. § 227(c); 47 C.F.R. § 64.1200(d)(1).<sup>1</sup>

26 17. The TCPA provides a private cause of action to persons who receive calls in  
27 violation of § 227(c) or a regulation promulgated thereunder. 47 U.S.C. § 227(c)(5).



1           18. According to findings of the FCC, the agency vested by Congress with  
2 authority to issue regulations implementing the TCPA, automated or prerecorded telephone  
3 calls are a greater nuisance and invasion of privacy than live solicitation calls and can be  
4 costly and inconvenient.

5           19. The FCC also recognizes that “wireless customers are charged for incoming  
6 calls whether they pay in advance or after the minutes are used.” *In re Rules and Regulations*  
7 *Implementing the Tel. Consumer Prot. Act of 1991*, 18 FCC Rcd. 14014, 14115 ¶ 165 (2003).

8           20. The FCC requires “prior express written consent” for all autodialed or  
9 prerecorded telemarketing robocalls to wireless numbers and residential lines. In  
10 particular:[A] consumer’s written consent to receive telemarketing robocalls must be signed  
11 and be sufficient to show that the consumer: (1) received clear and conspicuous disclosure  
12 of the consequences of providing the requested consent, i.e., that the consumer will receive  
13 future calls that deliver prerecorded messages by or on behalf of a specific seller; and (2)  
14 having received this information, agrees unambiguously to receive such calls at a telephone  
15 number the consumer designates. In addition, the written agreement must be obtained  
16 without requiring, directly or indirectly, that the agreement be executed as a condition of  
17 purchasing any good or service.

18           21. *In the Matter of Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*,  
19 27 FCC Rcd. 1830, 1844 ¶ 33 (2012) (footnote and internal quotation marks omitted). FCC  
20 regulations “generally establish that the party on whose behalf a solicitation is made bears  
21 ultimate responsibility for any violations.” *In the Matter of Rules and Regulations Implementing the*  
22 *Tel. Consumer Prot. Act of 1991*, 10 FCC Rcd. 12391, 12397 ¶ 13 (1995).

23           22. The FCC confirmed this principle in 2013, when it explained that “a seller ...  
24 may be held vicariously liable under federal common law principles of agency for violations  
25 of either section 227(b) or section 227(c) that are committed by third-party telemarketers.”  
26 *In the Matter of the Joint Petition Filed by Dish Network, LLC*, 28 FCC Rcd. 6574, 6574 ¶ 1  
27 (2013).

23. Under the TCPA, a text message is a call. *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946, 951 – 52 (9th Cir. 2009).

24. A corporate officer involved in the telemarketing at issue may be personally liable under the TCPA. E.g., *Jackson Five Star Catering, Inc. v. Beason*, Case No. 10-10010, 2013 U.S. Dist. LEXIS 159985, at \*10 (E.D. Mich. Nov. 8, 2013) (“[M]any courts have held that corporate actors can be individually liable for violating the TCPA where they had direct, personal participation in or personally authorized the conduct found to have violated the statute.” (internal quotation marks omitted)); *Maryland v. Universal Elections*, 787 F. Supp. 2d 408, 415 – 16 (D. Md. 2011) (“If an individual acting on behalf of a corporation could avoid individual liability, the TCPA would lose much of its force.”).

#### Factual Allegations

25. Plaintiff had no prior business relationship with Defendants.

26. Plaintiff is a “person” as defined by 47 U.S.C. § 153(39).

27. Defendant Ellison is a “person” as defined by 47 U.S.C. § 153(39).

28. The phone number (602) 295-XXXX (“Cell Number”) belongs to Plaintiff.

29. The Cell Number has been on the Do-Not-Call registry since November 7, 2006.

30. Despite this registration, Defendants placed the calls summarized in the following table with an Automated Telephone Dialing Systems (“ATDS”).

Date	Time	Caller ID
4/18/2024	5:17 PM	(602)459-6468

31. Plaintiff only seeks damages for the call placed April 18, 2024.

32. The Cell Number is assigned to a cellular phone used exclusively for personal residential purposes.

33. The Cell Number is not associated with a business.

#### Call to Plaintiff

34. On or about April 18, 2024, at 5:17 pm, Plaintiff received a call presenting caller ID (602)459-6468.

1 35. Plaintiff was greeted by an individual who identified themselves as Yuri from  
2 “Symmetry”.

3 36. Kevin pitched life insurance products offered by Symmetry, and offered to sell  
4 Plaintiff a life insurance policy.

5 37. On April 18, 2024, Plaintiff emailed Symmetry’s Chief Legal Officer, Matthew  
6 Goforth (“Goforth”), via email to investigate the call and discuss a resolution.

7 38. On May 8, 2024, Goforth responded “Symmetry does not have any affiliation  
8 with any insurance agent that has ever used that phone number for outgoing calls, and  
9 Symmetry does not have any employee named Yuri or any affiliation with any insurance  
10 agent named Yuri.” Exhibit 1.

11 39. In an effort to ascertain the identity of Yuri’s employer, Plaintiff sent Yuri a  
12 text message requesting that he identify his employer.

13 40. Yuri declined stating he had been instructed to to speak to Plaintiff because he  
14 had sued his employer.

15 41. The only individual Plaintiff ever discussed the call with was Mr. Goforth.

16 42. Plaintiff sent Yuri a text message from another number and asked what  
17 company he worked for.

18 43. Yuri confirmed Symmetry. Exhibit 2.

19 44. The Agreement required Symmetry to place Plaintiff’s telephone numbers on  
20 its internal Do Not Call list and the Do Not Call lists of its affiliates.

21 45. Upon information and belief, Symmetry failed to: a. Maintain a functional  
22 internal Do Not Call list; b. Actually place Plaintiff’s numbers on any such list; c. Train its  
23 employees and agents on the existence of its Do Not Call list; d. Train its employees and  
24 agents on proper maintenance of its Do Not Call list; e. Train its employees and agents on  
25 proper usage of its Do Not Call list; f. Implement any procedures to check numbers against  
26 its Do Not Call list before making calls; g. Implement any procedures to prevent its agents  
27 from calling numbers on its Do Not Call list; and h. Share its Do Not Call list with its  
28 affiliates as required by the Agreement.



1           46. The call from Symmetry's agent "Yuri" demonstrates that either: a. Symmetry  
2 has no functional Do Not Call list; b. Symmetry failed to place Plaintiff's numbers on its Do  
3 Not Call list; or c. Symmetry failed to train its agents to check and comply with its Do Not  
4 Call list.

5           47. These failures represent both a breach of the Agreement and evidence of  
6 Symmetry's willful non-compliance with the TCPA's requirements regarding internal Do  
7 Not Call lists.

8  
9                           **Defendants' Conduct Was Knowing and Willing**

10           48. Defendants intentionally called Plaintiff multiple times in order to advertise  
11 their services to Plaintiff.

12           49. Plaintiff believes and therefor avers Mr. Goforth, an officer of the Court and a  
13 member in good standing of the bar, advised Yuri of Plaintiff's complaint relating to Yuri's  
14 phone call, advised him not to communicate with Plaintiff, and then misrepresented Yuri's  
15 employment relationship with Symmetry.

16           50. These calls were knowingly and intentionally made after multiple direct written  
17 and verbal requests to be placed on their internal do-not-call list, and to not be called by  
18 Defendant or their representatives.

19           51. Plaintiff has commenced legal action in Jason Crews v. Symmetry Financial  
20 Group, LLC, Case No. 2:24-cv-00108-SMB alleging similar allegations of willful violations  
21 of the TCPA, only to be continually harassed by Symmetry and their representatives after  
22 explicitly agreeing not to contact Plaintiff.

23           52. Defendants knew their actions were in violation of the TCPA and willfully  
24 continued their conduct calling Plaintiff multiple times despite the registration of his  
25 number on the National Do-Not-Call List, and direct request not to be called.

26                           **Ellison's Personal Liability**

27           53. Defendant Ellison personally participated in the calls at issue because Ellison  
28 personally directed the calls to be transmitted throughout the United States including

1 numbers with Arizona area codes of which he knew were likely to belong to individuals,  
2 such as Plaintiff, who reside there.

3 54. Ellison is the principal officer of Defendant Symmetry.

4 55. Ellison closely holds Defendant Symmetry and is intimately involved in all  
5 decision making and legal activities of Defendant Symmetry.

6 56. Ellison made the decision to hire agents such as Yuri who are licensed in  
7 Arizona, approved of training employees such as Lopez on the use of proprietary  
8 technology, and directed his employees to use the technology with the intention of breaking  
9 state and federal laws.

10 57. Defendant Ellison has direct and personal involvement in and ultimate control  
11 over every aspect of Defendant Symmetry's wrongful conduct that violated the TCPA,  
12 and/or directly controlled and authorized this conduct.

13 58. Defendant Ellison at all times relevant to this Complaint acting alone or in  
14 concert with others, formulated, directed, controlled, had the authority to control, or  
15 participated in the acts and practices set forth in this Complaint,

16 59. There is precedent holding corporate officers personally liable when they  
17 participate in the alleged actions: "If the officer directly participated in or authorized the  
18 statutory violation, even though acting on behalf of the corporation, he may be personally  
19 liable. See *United States v. Pollution Serv. Of Oswego, Inc.*, 763 F.2d 133, 134-135 (2nd  
20 Cir.1985) The "well-settled" tort rule provides that "when corporate officers directly  
21 participate in or authorized the commission of a wrongful act, even if the act is done on  
22 behalf of the corporation, they may be personally liable." *General Motors Acceptance Corp. v.*  
23 *Bates*, 954 F.2d 1081, 1085 (5th Cir. 1992). The Fifth Circuit has elaborated that "the thrust  
24 of the general [tort] rule is that the officer to be held personally liable must have some direct  
25 personal participation in the tort, as where the defendant was the 'guiding spirit' behind the  
26 wrongful conduct...or the 'central figure' in the challenged corporate activity." *Mozingo v.*  
27 *Correct Mfg. Corp.*, 752 F.2d 168, 174 (5th Cir. 1985) (Citing *Escude Cruz v. Ortho Pharmaceutical*  
28 *Corp.*, 619 F. 2d 902, 907 (1st Cir.1980)) (Citing *Texas v. American Blastfax, Inc.*, 164 F. Supp.



1 2d 892 (W.D. Tex. 2001) Quoting *Texas v. American Blastfax*: The Court finds the above  
2 principles applicable to the TCPA that is, an officer may be personally liable under the  
3 TCPA if he had direct, personal participation in or personally authorized the conduct found  
4 to have violated the statute, and was not merely tangentially involved. Individuals who  
5 directly (and here, knowingly and willfully) violate the TCPA should not escape liability  
6 solely because they are corporate officers. As the State persuasive argues, to hold otherwise  
7 would allow the individual defendants to simply dissolve Blastfax, set-up a new shell  
8 corporation, and repeat their conduct. Congress surely did not intend to permit such a result  
9 in passing the TCPA. To be clear, the Court finds Greg and Michael Horne were the  
10 “guiding spirits” an the “central figures” behind the TCPA violations. They were the two  
11 persons who controlled all of Blastfax’s day-to-day operations. They both had direct,  
12 personal involvement in and ultimate control over every aspect of Blastfax’s wrongful  
13 conduct that violate the TCPA, and/or directly controlled and authorized this conduct. And  
14 they did so with their eyes and pocketbooks wide open. After October 5, 2000, Greg and  
15 Michael Horne had good reason to believe they were running a business that violated the  
16 TCPA. On February 9, 2001, they knew they were. Yet they continued to direct their  
17 company to send unsolicited intrastate fax advertisements. This is far more than a simple  
18 derivative liability case. Accordingly, the Court \*899 holds defendants Greg and Michael  
19 Horne are jointly and severally liable with Defendant Blastfax, Inc., for all TCPA damages in  
20 this lawsuit.” *Texas v. American Blastfax, Inc.*, 164 F. Supp. 2d 892 (W.D. Tex. 2001).

21 60. The Same Court held that corporate officers were also personally liable for  
22 DTPA violations; The State contends Greg and Michael Horne are personally liable for any  
23 DTPA damages because they were solely responsible for the violating conduct....For the  
24 same reasons discussed in finding the individual defendants personally liable under the  
25 TCPA, the Court agrees. See, e.g., *Barclay v. Johnson*, 686 S.W.2d 334, 336-37 (Tex. Civ. App.-  
26 Houston [1ST Dist.] 1985, no writ) (finding personal liability for corporate officer in DTPA  
27 misrepresentation claim, based on general rule that “a corporate agent knowingly  
28 participating in a tortious or fraudulent act may be held individually liable, even though he



1 performed the act as an agent for the corporation. ....Accordingly, the Court finds  
2 defendants American Blastfax, Inc., Greg Horne and Michael Horne are jointly and severally  
3 liable for \$6,000 in damages for their violations of the DTPA.” *Texas v. American Blastfax,*  
4 *Inc.*, 164 F. Supp. 2d 892 (W.D. Tex. 2001).

5 61. Defendant Ellison is the CEO of Symmetry and controls the day-to-day  
6 operations of Symmetry and directs his employees, agents, salespersons, and solicitors to  
7 make TCPA-violating phone calls.

8 62. Defendant Ellison is not merely a bystander. He is the mastermind that  
9 schemed, planned, directed, initiated, and controlled illegal and fraudulent behavior.

10 63. Defendant Ellison is well aware their conduct violated the TCPA and refused to  
11 alter their behavior. Defendant Ellison is the principal director and officer of Defendant  
12 Symmetry and the only person with the power to make unlawful, fraudulent, and unethical  
13 behavior stop.

14 64. Defendant’s calls harmed Plaintiff by causing the very harm that Congress  
15 sought to prevent—a “nuisance and invasion of privacy.

#### 16 Vicarious Liability

17 65. Defendant Symmetry through their authorized representative Yuri made  
18 multiple auto-dialed robocalls to Plaintiff.

19 66. Yuri used utilized software provided by Symmetry.

20 67. Yuri used proprietary information and systems provided by Defendant  
21 Symmetry.

22 68. Symmetry authorized Yuri to make the phone calls at issue here.

23 69. Symmetry was aware of the phone calls being made by Yuri and accepted  
24 referrals from Yuri pursuant to the authorization provided to Yuri by Symmetry.

25 70. Symmetry gave access to their proprietary systems and software to Defendant  
26 Yuri.

27 71. Symmetry hired an offshore telemarketer to make phone calls on their behalf.  
28 Yuri is the agent of Symmetry and the offshore telemarketer is the subagent of Symmetry.

72. The offshore telemarketer made the phone calls at the direction and control of Symmetry.

73. Symmetry exercised interim control over whom and under what conditions referrals would be accepted.

74. Symmetry has been aware of the TCPA-violating phone calls made by salespersons for years and has ratified the behavior by maintaining the salespeople responsible for the violations and continuing to accept referrals despite the knowledge of the violations.

75. Ellison has made telemarketing in violation of the TCPA a regular source of referrals in multiple organizations in which he is associated.

76. A defendant may be held vicariously liable for Telephone Consumer Protection Act (TCPA) violations where the plaintiff establishes an agency relationship, as defined by federal common law, between the defendant and a third-party caller. Telephone Consumer Protection Act of 1991, § 3(a), 47 U.S.C.A. § 227(b)(2). *Gomez v. Campbell-Ewald Co.*, 768 F.3d 872, 11 (9th Cir. 2014).

## Ratification

77. Symmetry was delivered DNC requests by Plaintiff on December 9, 2023.

78. Symmetry was informed verbally of Plaintiff's DNC request to their employee Defendant Yuri on December 9, 2023.

79. Symmetry was fully aware of Plaintiff's desire to not be called and solicited for their services.

80. On December 12, 19, 21, four times on December 28, twice on January 2, and on January 16 Symmetry with full knowledge of Plaintiff's desire to not be called and solicited, continued to call Plaintiff to advertise their products.

81. Defendant Symmetry was consciously calling Plaintiff's with full awareness the phone calls were violating the TCPA and that Plaintiff had delivered multiple DNC requests to Defendant Freedom.

82. Defendant Symmetry was consciously calling Plaintiff's with full awareness the they did not maintain an internal do not call policy as required by the TCPA and that Plaintiff had requested it.

83. Defendant Symmetry was consciously calling Plaintiff's with full awareness the they did not place Plaintiff on their internal do not call list as required by the TCPA and that Plaintiff had requested it because they did not maintain one.

84. Even when a party is not directly liable, it may nevertheless be vicariously liable "under federal common law principles of agency for TCPA violations committed by third-party telemarketers." *DISH Network*, 28 FCC Rcd. at 6584. These agency principles include "not only formal agency [or actual authority], but also . . . apparent authority and ratification." *Id.*; see also *FDS Rest., Inc. v. All Plumbing, Inc.*, 241 A.3d 222, 238n. 24 (D. C. 2020) (noting that a different provision of the TCPA, 47 U.S.C. § 217, creates vicarious liability for the acts of an agent). The plaintiff must establish the agency relationship between the defendant and the third-party caller to establish vicarious liability. See *Henderson v. United Student Aid Funds, Inc.*, 918 F.3d 1068, 1072-73 (9th Cir. 2019), as amended on denial of reh'g and reh'g en banc (May 6, 2019) (citing *Gomez v. Campbell-Ewald Co.*, 768 F.3d 871, 878 (9th Cir. 2014), *aff'd*, 577 U.S. 153 (2016), as revised (Feb. 9, 2016)).

### **Breach of Contract**

85. On or about January 17, 2024, Plaintiff and Symmetry entered into a written agreement ("Agreement") that created certain ongoing obligations between the parties.

86. The Agreement remains in full force and effect.

87. On April 18, 2024, at approximately 8:14 PM, Plaintiff received a telephone call from (602)459-6468 from an individual claiming to represent Symmetry Financial.

88. On April 19, 2024, Plaintiff identified this caller as "Yuri" and reported this information to Goforth.

89. On May 8, 2024, Goforth, in his capacity as Chief Legal Officer of Symmetry, responded by email stating: "We have searched our records and can confirm that the call was not made by or on behalf of Symmetry. Symmetry has never used that phone number for



1 outgoing calls, Symmetry does not have any affiliation with any insurance agent that has ever  
2 used that phone number for outgoing calls, and Symmetry does not have any employee  
3 named Yuri or any affiliation with any insurance agent named Yuri."

4 90. Upon information and belief, Goforth knew these representations were false  
5 when made.

6 91. Text messages between Plaintiff and the caller from (602)459-6498  
7 demonstrate the caller's connection to Symmetry, as evidenced by the following exchange: a.  
8 Plaintiff: "which company are you from?" b. Plaintiff: "Is it symmetry?" c. Caller: "Yes, how  
9 can I help out?"

10 92. These communications were made after the Agreement was in effect and in  
11 direct violation of its terms.

12 93. Upon information and belief, Goforth instructed or caused the caller to cease  
13 communications with Plaintiff in order to conceal both the breach of the Agreement and  
14 Goforth's misrepresentations about Symmetry's connection to the caller.

15 **The TCPA Prohibits All Automated Calls to Protected Numbers**

16 94. The TCPA makes it unlawful "to make any call (other than a call made for  
17 emergency purposes or made with the prior express consent of the called party) using an  
18 automated telephone dialing system or an artificial or prerecorded voice ... to any  
19 telephone number assigned to a ... paging service, cellular telephone service, specialized  
20 mobile radio service, or other radio common carrier service, or any service for which the  
21 party is charged for the call": 47 U.S.C. § 227 (b)(1)(A)(iii).

22 95. Congress singled out these services for special protection because Congress  
23 realized their special importance in terms of consumer privacy (as is the case with cellular  
24 phones): *Barr v. Am. Ass'n of Pol. Consultants Inc.*, 140 S. Ct. 2335, 2356, (2020) (Gorsuch, J.  
25 & Thomas, concurring in part and dissenting in part).

26 96. According to findings by the Federal Communications Commission ("FCC"),  
27 which is the agency Congress vested with the authority to issue regulations implementing  
28 the TCPA, such messages are prohibited because, as Congress found, automated or

1 prerecorded messages are a greater nuisance and invasion of privacy than live ones, are  
2 costly, and are inconvenient.

3 97. The TCPA provides a private cause of action to persons who receive calls in  
4 violation of 47 U.S.C. § 227(b)(1)(A). 47 U.S.C. § 227(b)(1)(3).

5 98. These causes of action apply to users of any of four protected services (pager,  
6 cellular, specialized mobile radio [i.e., radio telephony locator beacon or dispatch system], or  
7 another radio common carrier service [i.e., ship-to-shore or air-to-ground]), or any service,  
8 including residential, VoIP, and landline services, for which the called party is charged:  
9 *Lynn, Monarch Recovery Mgmt. Inc.*, 953 F. Supp. 2d 612, 623, (D. Md. 2013).

10 99. "Non-Emergency pre-recorded voice or autodialed calls to the destinations  
11 enumerated in 47 U.S.C. § 227(b)(1)(A) are permissible only with the prior express consent  
12 of the called party."

13 100. U.S.C. § 227(c)(2) states, "No person or entity shall initiate any telephone  
14 solicitation to ... [a] residential telephone subscriber who has registered his or her  
15 telephone number on the National Do-Not-Call Registry of persons who do not wish to  
16 receive telephone solicitations that is maintained by the Federal Government" and defines  
17 "telephone solicitation" as "the initiation of a telephone call or message for the purpose of  
18 encouraging the purchase or rental of, or investment in, property, goods, or services, which  
19 is transmitted to any person...": U.S.C. § 227(f)(15).

20 101. The FCC also recognized that "wireless customers are charged for incoming  
21 calls whether they pay in advance or after the minutes are used": In re Rules and  
22 Regulations Implementing the Tel. Consumer Prot. Act of 1991, CG Docket No. 02-278,  
23 Report and Order, 18 FCC Rcd. 14014, 14115, ¶ 165 (2003).

24 102. In 2013, the FCC required prior express written consent for all autodialed or  
25 prerecorded telemarketing calls ("robocalls") to wireless numbers and residential lines.

26 Specifically, it ordered:

27 [A] Consumer's written consent to receive telemarketing robocalls must be signed  
28 and be sufficient to show that the consumer: (1) received "clear and conspicuous  
disclosure" of the consequences of providing the requested consent, i.e., that the  
consumer will receive future calls that deliver prerecorded messages by or on behalf



1 of a specific seller; and (2) having received this information, agrees unambiguously to  
2 receive such calls at a telephone number the consumer designates. In addition, the  
3 written agreement must be obtained "without requiring, directly or indirectly, that  
4 the agreement be executed as a condition of purchasing any good or service."

5 103. *In the Matter of Rules & Regulations Implementing the Tel. Consumer Prot. Act of*  
6 *1991*, 27 FCC Rcd. 1830, 1844 (2012) (footnotes omitted).

7 104. 47 C.F.R. § 64.1200 extends 47 U.S.C. § 227 and establishes several delivery  
8 restrictions. It states, "No person or entity may ... [e]xcept as provided ... initiate any  
9 telephone call ... using an automatic telephone dialing system or an artificial or prerecorded  
10 voice."

11 105. 47 C.F.R. § 64.1200(a)(1) specifically protects the following: "emergency  
12 telephone line," "guest room or patient room of a hospital, health care facility, elderly  
13 home, or similar establishment," and/or "cellular telephone service." 47 C.F.R. §  
14 64.1200(a)(2) further prohibits entities from "initiat[ing], or caus[ing] to be initiated, any  
15 telephone call that includes or introduces an advertisement or constitutes telemarketing,  
16 using an automatic telephone dialing system or an artificial or prerecorded voice, to any of  
17 the lines or telephone numbers described... "

18 106. The National Do-Not-Call Registry allows consumers to register their  
19 telephone numbers and thereby indicate their desire to not receive telephone solicitations at  
20 those numbers: 47 C.F.R. § 64.1200(c)(2).

21 107. A listing on the Registry "must be honored indefinitely, or until the  
22 registration is cancelled by the consumer or the telephone number is removed by the  
23 database administrator": *Id.*

24 108. The TCPA and implementing regulations prohibit the initiation of telephone  
25 solicitations to residential telephone subscribers whose numbers are on the Registry and  
26 provide a private right of action against any entity making those calls or "on whose behalf"  
27 such calls are promoted: 47 U.S.C. § 227(c)(5); 47 C.F.R. § 64.1200(c)(2).

28 109. 47 C.F.R. § 64.1200(d) states, "No person or entity shall initiate any call for  
telemarketing purposes to a residential telephone subscriber unless such person or entity  
has instituted procedures for maintaining a list of persons who request not to receive  
COMPLAINT- 16



1 telemarketing calls made by or on behalf of that person or entity." It goes on to establish  
 2 specific "minimum standards":

3 (1) "Persons or entities making calls for telemarketing purposes must have a  
 4 written policy, available upon demand..."

5 (2) "[P]ersonnel engaged in any aspect of telemarketing must be informed and  
 6 trained in the existence and use of the do-not-call list."

7 (3) "If a person or entity making a call for telemarketing purposes ... receives a  
 8 request ... not to receive calls from that person or entity, the person or entity  
 9 must record the request and place the subscriber's name ... and telephone  
 10 number on the do-not-call list at the time the request is made ... must honor a  
 11 residential subscriber's do-not-call request within a reasonable time from the  
 12 date such request is made."

13 (4) "A person or entity making a call for telemarketing purposes must provide  
 14 the called party with the name of the individual caller, the name of the person or  
 15 entity on whose behalf the call is being made, and a telephone number or  
 16 address at which the person or entity may be contacted."

17 (5) "A person or entity making calls for telemarketing purposes must maintain a  
 18 record of a consumer's request not to receive further telemarketing calls."

## 19 Claims

### 20 Count One

21 110. Plaintiff incorporates the foregoing allegations as fully set forth herein.

22 111. The foregoing acts and omissions of Defendants and/or their affiliates,  
 23 agents, and/or other persons or entities acting on Defendants' behalf constitute violations  
 24 of the TCPA, 47 U.S.C. § 227, by sending calls, except for emergency purposes, to  
 25 Plaintiff's telephone which is assigned to a cellular telephone service using an ATDS.

26 112. As a result of their unlawful conduct, Defendants invaded Plaintiff's personal  
 27 privacy, causing Plaintiff to suffer damages and, under 47 U.S.C. § 227(b)(3)(B), entitling  
 28 him to recover \$500 in civil fines for each violation and an injunction requiring Defendants  
 to stop his illegal calling campaign.

113. Plaintiff is also entitled to and does seek injunctive relief prohibiting  
 Defendants and/or his affiliates, agents, and/or other persons or entities acting on  
 Defendants' behalf from violating the TCPA, 47 U.S.C. § 227, by making calls or sending

1 messages, except for emergency purposes, to any number using an artificial or prerecorded  
2 voice in the future.

3 114. Plaintiff is entitled to an award up to \$1500 in damages for each knowing and  
4 willful violations of 47 U.S.C. § 227(b)(3)(B)

5 115. Defendants' violations were willful and/or knowing.

6 **Count Two**

7 116. Plaintiff incorporates the foregoing allegations as fully set forth herein.

8 117. Defendants called Plaintiff's private residential telephone number which was  
9 registered on the National Do-Not-Call Registry more than thirty-one (31) days prior to the  
10 calls, in violation of 47 U.S.C. § 227(c)(3)(F) and 47 C.F.R. § 64.1200(c)(2).

11 118. As a result of their unlawful conduct, Defendants invaded Plaintiff's personal  
12 privacy, causing Plaintiff to suffer damages and, under 47 U.S.C. § 227(c)(3)(F) entitling him  
13 to recover \$500 in civil fines for each violation and an injunction requiring Defendants to  
14 stop his illegal calling campaign.

15 119. Plaintiff is entitled to an award up to \$1500 in damages for each knowing and  
16 willful violations of 47 U.S.C. § 227(c)(3)(F).

17 120. Defendants' violations were willful and/or knowing.

18 **Count Three**

19 **Violation of the Florida Telephone Solicitation Act,**

20 **Fla. Stat. § 501.059**

21 121. Plaintiff incorporates the foregoing allegations as fully set forth herein.

22 122. It is a violation of the FTSA to "make or knowingly allow a telephonic sales  
23 call to be made if such call involves an automated system for the selection or dialing of  
24 telephone numbers or the playing of a recorded message when a connection is completed to  
25 a number called without the prior express written consent of the called party." Fla. Stat. §  
26 501.059(8)(a).

27 123. A "telephonic sales call" is defined as a "telephone call, text message, or  
28 voicemail transmission to a consumer for the purpose of soliciting a sale of any consumer

1 goods or services, soliciting an extension of credit for consumer goods or services, or  
2 obtaining information that will or may be used for the direct solicitation of a sale of  
3 consumer goods or services or an extension of credit for such purposes.” Fla. Stat. §  
4 501.059(1)(i).

5 124. Defendants failed to secure prior express written consent from Plaintiff.

6 125. In violation of the FTSA, Defendant made and/or knowingly allowed  
7 telephonic sales calls to be made to Plaintiff without Plaintiff’s prior express written consent.

8 126. Defendants made and/or knowingly allowed the telephonic sales calls to  
9 Plaintiff to be made utilizing an automated system for the selection or dialing of telephone  
10 numbers.

11 127. As a result of Defendants’ conduct, and pursuant to § 501.059(10)(a) of the  
12 FTSA, Plaintiff was harmed and are each entitled to a minimum of \$500.00 in damages for  
13 each violation. *Id.*

14 **Count Four**

15 **Breach of Contract**

16 128. Plaintiff incorporates all preceding paragraphs as if fully set forth herein.

17 129. The Agreement constitutes a valid and binding contract.

18 130. Symmetry materially breached its obligations under the Agreement.

19 131. As a direct result of Symmetry's breach, Plaintiff has been damaged.

20 **Count Five**

21 **Fraudulent Misrepresentation**

22 132. Plaintiff incorporates all preceding paragraphs as if fully set forth herein.

23 133. Goforth, acting in his individual capacity and as an agent of Symmetry,  
24 knowingly made false representations regarding Symmetry's compliance with the Agreement

25 134. Goforth made these representations with the intent to deceive Plaintiff and  
26 conceal Symmetry's breach of the Agreement.  
27  
28



135. Plaintiff relied on these misrepresentations to his detriment.

**Relief Sought**

WHEREFORE, Plaintiff requests the following relief:

A. Injunctive relief prohibiting Defendants from calling telephone numbers using an artificial or prerecorded voice and/or ATDS.

B. Because of Defendants' violations of the TCPA, Plaintiff seeks for himself \$500 in damages for each violation or—where such regulations were willfully or knowingly violated—up to \$1,500 per violation, pursuant to 47 U.S.C. § 227(b)(3).

C. Because of Defendants' violations of the TCPA, Plaintiff seeks for himself \$500 in damages for each violation or—where such regulations were willfully or knowingly violated—up to \$1,500 per violation, pursuant to 47 U.S.C. § 227(c)(3).

D. Because of Defendants' violations of the FTSA, Plaintiff seeks for himself \$500 in damages for each violation or—where such regulations were willfully or knowingly violated—up to \$1,500 per violation, pursuant to Fla. Stat. § 501.059.

E. Compensatory Damages

F. Punitive Damages

G. Such other relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED on this February 1, 2025.

  
Jason Crews